XI-MC-2

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

(18)

आदेश पत्रक

मामला क्रमांक Cr.A. 509/06 सन् 200

विरुद्ध

-1-

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.509 /2006

Appellant — Temsai S/o Puranram, Aged about 26 years, Occupation – Agriculture, Gram – Maheshpur Thana – Janjgir, Distt. – Sarguja (CG)

VERSUS

RESPONDENT — State of Chhattisgarh through : PS. Jainagar, Distt. – Sarguja (CG)

Present:

Miss. Sharmila Singhai with Mr. Prasun Goyal, counsel for the appellant.
Mr. Arun Sao, GA for the State/respondent.

ORAL JUDGMENT

(28th September 2007)

Dhirendra Mishra, J

This appeal is directed against the judgment of conviction and order of sentence dated 30.6.2006 passed in S.T.No. 237/05 whereby learned I Additional Sessions Judge, Surajpur, Distt. Sarguja has convicted the appellant under Section 376(1) of the IPC and sentenced him to undergo RI for 7 years and pay a fine of Rs.200/-, in default of payment of fine to undergo additional RI for two months.

[पीछे देखें

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

(15)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Case of the prosecution, in brief, is that on 1.5.2005 at about 9.30 p.m. the prosecutrix went to the house of her nephew Jeetram where Jeetram offered her liquor. At that time Temsai also came there and all the three consumed liquor together. However, Jeetram went away towards Jokhan's house and Sushila, wife of nephew of the prosecutrix, went towards the field when the appellant forcibly raped the prosecutrix. The prosecutrix raised an alarm whereupon Godhnibai, wife of accused, reached there and started quarrelling with her husband, the accused. The report was lodged by the prosecutrix on 3.5.2005 and delay in lodging the report has been explained in the FIR that her husband had gone away to Ambikapur on the date of incident. Thereafter, the prosecutrix was medically examined and her medical examination report is Ex.P/10, which has been proved by Dr. Rojbula Tirki (PW-7).

After completion of investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Surajpur and the same was received on transfer for trial by the learned Additional Sessions Judge.

Prosecution examined 8 witnesses during trial and thereafter, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the

[पीछे ले ...

(20)

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

circumstances appearing against him in the prosecution case, pleaded innocence and stated that he has been falsely implicated due to animosity. The accused also examined Jokhanram and Prakash Singh as defence witnesses.

Learned trial Court after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as mentioned in paragraph – 1 of this judgment.

Learned counsel for the appellant submits that from perusal of statements of the prosecutrix herself as also PW-5 Sushilabai, it is evident that the prosecutrix was a consenting party. The incident occurred on 1.5.2005 at about 12.00 noon whereas report of the same was lodged on .3.5.2005 at about 10.30 p.m. and explanation present in the FIR for delay in lodging the report is not established from the statement of the prosecutrix who has claimed that she lodged the report on the very same day.

On the other hand, learned counsel for the State/respondent supported impugned judgment of the trial Court.

[पीछे के पृष्ठ

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

(21)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

-4-

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

I have heard learned counsel for the respective parties and have perused the impugned judgment as also the evidence available on record.

It is not in dispute that age of the prosecutrix at the time of incident was 44/48 years. The prosecutrix has stated that on the date of incident, she had gone to the house of his nephew Jeetram where Temsai was sitting. At that time accused Temsai caught her, laid her on the ground and thereafter raped her. She had shouted at the time of intercourse, then wife of the accused reached there and started beating her with hand and fists. In the evening on return of her husband, the prosecutrix narrated the incident to him and lodged the report. In cross-examination in paragraph 8 she has stated that she went to lodge the report on the next day of incident. In paragraph 10 she has stated that when she went to the house of Jeetram, at that time Jokhan, Anjani, Urmila, Udaipurhin, Bittu, Bandhan and Sushila were present there, however, all of them went away and only thereafter, the accused committed offence while she was alone. She has denied that she consumed liquor on that date with the aforesaid persons.

PW-2 Lalsai, husband of the prosecutrix, has stated that he returned from Ambikapur on the next day of the incident when his wife narrated about the incident and thereafter, both

[पीछे

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

(22)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of them went to lodge the report in the Police Station Jainagar. Jeetram (PW-3) has stated in paragraph 3 of his statement that there was animosity between Temsai and Lalsai, husband of the prosecutrix and Temsai did not visit the house of Lalsai and Lalsai after consuming liquor used to threaten that he shall send Temsai to jail. PW-5 Sushilabai, who was married to Jeetram and residing with one Moharsai as his wife at the time of incident, has stated that on the date of incident the prosecutrix and accused persons were in her house. She had gone to fetch water and on her return, she saw that wife of the appellant had come to her house and she was abusing the prosecutrix by hurling filthy language and she was saying as to why she (the prosecutrix) was entangled with her husband and because of her, he (the appellant) beat her. Thereafter, wife of the appellant took the prosecutrix towards a lane and the appellant also followed them.

Having examined the statements of these witnesses including the statement of the prosecutrix, possibility of the prosecutrix being a consenting party cannot be ruled out. The manner in which the offence is alleged to have been committed, is also suggestive of the fact that after other persons who were present at the place of incident i.e. house of Jeetram, left the house and only the two i.e. the prosecutrix and the appellant,

[पीछे

XI-HC-22

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

(23)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

-6-

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

were there, the act of sexual intercourse was committed by the appellant with the prosecutrix.

From the statement of Sushilabai it is evident that wife of the appellant suspected illicit relationship between the appellant and the prosecutrix and on that account, she was abusing the prosecutrix using filthy language on the date of incident. Thus, in the considered opinion of this Court, the trial Court was not justified in reaching to the conclusion that the appellant committed sexual intercourse with the prosecutrix against her wishes and instead, on the basis of evidence available on record the trial Court ought to have extended benefit of doubt to the appellant. The appeal preferred by the appellant deserves to be allowed.

In the result, the appeal is allowed. Conviction of the appellant under Section 376(1) of IPC and sentence passed thereon, are set aside. He is acquitted of the above charges. He be set at liberty forthwith if not required in any other case.

Sd/-
Dhirendra Mishra
Judge

KA

[पीछे देखें]